

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

REG-2008-00023

June 17, 2008

PROPOSED TEXT

TITLE INSURANCE REBATES AND COMMISSIONS

Adopt regulations to amend Title 10, Chapter 5, Subchapter 3, Article 14, to read as follows
(new copy in italics):

Article 14. Title Insurance

Subarticle 2. Regulations Governing Rebates and Commissions

§ 2555.5 Preamble

(a) *Section 12404 of the California Insurance Code prohibits a title insurer, underwritten title company or controlled escrow company to pay, directly or indirectly, any commission, compensation, or other consideration to any person as an inducement for the placement or referral of title business. Section 12404(d) provides that reasonable expenditures for food, beverages, entertainment, educational programs, and promotional items constituting ordinary business expenses are deemed not to constitute an inducement for the placement or referral of title business, if the expenditures are correctly reported and properly substantiated, as specified. The Insurance Commissioner has promulgated these regulations to accomplish the following objectives:*

(1) *To delineate the standards for reasonable expenditures that are deemed not to constitute an inducement for the placement or referral of title business within the meaning of Insurance Code Section 12404(d);*

(2) *To discourage a title insurer, underwritten title company or controlled escrow company from paying, directly or indirectly, any commission, compensation, or other consideration to any person as an inducement for the placement or referral of title business; and*

(3) *To monitor and ensure the prompt and comprehensive reporting of expenditures by title marketing and sales representatives employed by, or independent contractors of, title insurers, underwritten title companies and controlled escrow companies made on behalf of and/or benefiting a person, as defined in Insurance Code Section 12404(b)(1).*

(b) *The Insurance Code provides the commissioner with access to all records of the holder of, or applicant for, any certificate or license issued under this code and the power to examine the affairs of every person engaged in the business of insurance to determine if such person is engaged in unlawful inducements for the placement or referral of title business. Any and all information received pursuant to the Department's request shall be given confidential treatment, as provided in Insurance Code Section 735.5.*

NOTE: Authority: Sections 730, 733, 12389, 12404, 12405, 12405.7, 12407, 12414.22, and 12921, of the Insurance Code; 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216.
Reference: Sections 730 et seq., 12389, 12389.1, 12389.2, 12404-12411, 12919, and 12921 of the Insurance Code.

§ 2555.6 Definition

As used in these regulations:

(a) *"Title marketing and/or sales representative" means a natural person employed by, or an independent contractor of, a title insurer, underwritten title company, or controlled escrow company who markets, offers, solicits, negotiates or sells title insurance, as defined in California Insurance Code Section 12340.1.*

NOTE: Authority: Sections 730, 733, 12389, 12404, 12405, 12405.7, 12407, 12414.22, and 12921, of the Insurance Code; 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216.
Reference: Sections 730 et seq., 12389, 12389.1, 12389.2, 12404-12411, 12919, and 12921 of the Insurance Code.

§ 2555.7 Standards of Reasonable Expenditures

A reasonable expenditure for food, beverages, entertainment, educational programs, and promotional items that does not exceed \$25.00 per year, in the aggregate, on behalf of or benefiting a person, as defined by Insurance Code Section 12404(b)(1), shall be deemed not to constitute an inducement for the placement or referral of title business, provided that such expenditures are reasonable, necessary, correctly reported and properly substantiated as specified in Insurance Code Section 12404(d).

NOTE: Authority: Sections 730, 733, 12389, 12404, 12405, 12405.7, 12407, 12414.22, and 12921, of the Insurance Code; 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216.
Reference: Sections 730 et seq., 12389, 12389.1, 12389.2, 12404-12411, 12919, and 12921 of the Insurance Code.

§ 2555.8 *Reporting and Record Documentation*

(a) Every title insurer, underwritten title company and controlled escrow company shall execute and file with the commissioner a Notice of Appointment, appointing each and every title marketing and/or sales representative as the marketing and/or sales representative of the title insurer, underwritten title company and controlled escrow company. Such Notice of Appointment shall be filed within 30 days of hiring or contracting with each said title marketing and/or sales representative. Each appointment made shall continue in force until the filing of a Notice of Termination by the title insurer, underwritten title company or controlled escrow company. Such Notice of Termination shall be filed within 15 days of termination of employment or contract expiration.

(b) Every title insurer, underwritten title company and controlled escrow company shall provide, on or before April 1 of each year, a report, verified by the chief executive officer or his or her designee, under penalty of perjury under the laws of California, for the prior year to the Rate Specialist Bureau, Department of Insurance, 300 Spring Street, Los Angeles, California 90013 evidencing any and all expenditures made by each title marketing and/or sales representative on behalf of and/or benefiting a person, as described in Insurance Code section 12404(b)(1). The report shall be submitted electronically in an Excel spreadsheet format to www.rsb@insurance.ca.gov, in a form prescribed by the Commissioner, and shall include the following information:

- (1) Name of the person, as described in Insurance Code section 12404(b)
- (2) Address of the person
- (3) Employer of the person
- (4) Address for the person's employer
- (5) Name of the Title Marketing/Sales Representative and Date of Birth
- (6) Purpose of the Expenditure
- (7) Nature of the business conducted in conjunction with the expenditure
- (8) Date of the expenditure
- (9) Amount of the expenditure
- (10) Description of the expenditure (i.e. food, beverage, concert ticket, sporting event, entertainment, travel, educational program, promotional item, etc.)
- (11) Indicate whether a receipt, invoice, bill, statement, or other documentation for each such expenditure is available

This provision does not preclude the Commissioner from requiring information at any other time, in addition to the time specified above, as the Commissioner deems necessary to determine compliance with Article 6, Chapter 1, Part 6, Division 2.

(c) Every title insurer, underwritten title company and controlled escrow company shall maintain copies of all receipts, invoices, bills, statements or other documentation evidencing any and all expenditures made on behalf of and/or benefiting a person, as described in Insurance

Code section 12404(b)(1), for at least seven (7) years from the date of the expenditure. Failure of a licensee to maintain such documentation for the requisite amount of time shall justify a finding that the licensee was in noncompliance with these regulations or other applicable code provisions.

(d) Every title insurer, underwritten title company and controlled escrow company shall provide notice to the Chief of the Investigation Division, Department of Insurance, Central Intake Unit, 9342 Tech Center Drive, Suite 100, Sacramento, California 95826, www.investigations@insurance.ca.gov within 30 days of the date that an expenditure on behalf of and/or benefiting a person, as defined in Insurance Code section 12404(b)(1), exceeds a total of \$25.00, and the name of the title marketing and/or sales representatives making such expenditures.

(e) Failure of a licensee to provide the Commissioner with requested information sufficient to monitor expenditures on behalf of and/or benefiting a person, as described in Insurance Code section 12404(b)(1), in the requisite time period, shall justify a finding that the licensee was in noncompliance with these regulations or other applicable code provisions.

NOTE: Authority: Sections 730, 733, 12389, 12404, 12405, 12405.7, 12407, 12414.22, and 12921, of the Insurance Code; 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216.
Reference: Sections 730 et seq., 12389, 12389.1, 12389.2, 12404-12411, 12919, and 12921 of the Insurance Code.

§ 2555.9 Penalties

(a) In enforcing any of the provisions of this regulation, the commissioner shall be entitled to the enforcement remedies provided for in Sections 12409, 12410 and 12411 of the Insurance Code.

(b) Nothing in these regulations alters the liability of an insurer, underwritten title company and controlled escrow company for acts of its employees and/or contractors.

NOTE: Authority: Sections 730, 733, 12389, 12404, 12405, 12405.7, 12407, 12414.22, and 12921, of the Insurance Code; 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216.
Reference: Sections 730 et seq., 12389, 12389.1, 12389.2, 12404-12411, 12919, and 12921 of the Insurance Code.

§ 2556 Maintenance of Records

§ 2556.1 Filing of Rates and Reporting of Statistics

§ 2556.2 Rating Examinations